



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

January 6, 2014

IN RESPONSE REFER
TO FOIA/PA-2013-00011A
(FOIA/PA-2013-0128)

Mr. Lawrence Criscione
(b)(6)

Dear Mr. Criscione:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your April 16, 2013, e-mail to the Freedom of Information Act/Privacy Act officer. You appealed the agency's April 16, 2013, response letter to your February 12, 2013, Freedom of Information Act (FOIA) request (FOIA/PA-2013-0128) for a copy of the document, "Non-Concurrence on Evaluation of Duke Energy Carolinas, LLC September 26, 2008, Response to NRC Letter dated August 15, 2008 related to External Flooding," Agencywide Documents Access and Management System (ADAMS) Accession No. ML091170104.

Acting on your appeal, the NRC reviewed the record, and has decided to release additional information that was previously redacted in this record. The revised record is enclosed. The NRC has granted your appeal to the extent that it has elected to release some of the previously-redacted information challenged in your appeal. The NRC has denied your appeal with regard to some of the previously-redacted information, as it is continuing to withhold some redacted information under FOIA Exemption 7(F). The NRC has thus denied your appeal in part and granted your appeal in part.

You asserted in your appeal that the Exemption 7(F) redactions in this record were not proper because nothing in the report indicates that the information was compiled for law-enforcement purposes, nor is there anything that would indicate that disclosure could reasonably be expected to endanger the life or physical safety of an individual. Additionally, you claim that the withheld information "merely pertains to the nuclear safety hazard which deficiencies in the Oconee Station's flooding defenses pose to the American public." You also state that "these safety risks are present due to the risks of natural disasters and latent engineering/construction flaws and have nothing specifically to do with terrorist activities."

As you point out in your appeal, FOIA Exemption 7(F) may be used to withhold information compiled for law enforcement purposes that, if disclosed, could reasonably be expected to endanger the life or physical safety of an individual. The term "law enforcement purposes" has been interpreted broadly by federal courts to include the enforcement of civil matters and regulatory proceedings.¹ As to the endangerment finding required for Exemption 7(F), courts will defer to an agency's assessment of danger within limits.² Furthermore, of particular relevance to this appeal, two federal district court cases have upheld agencies' use of Exemption 7(F) to withhold flooding-related information from public disclosure.³

The information that is still being withheld in this record was compiled for law enforcement purposes because the document discusses a disagreement within the NRC's Office of Nuclear Reactor Regulation pertaining to the agency's analysis of, and response to, an issue related to a licensee's compliance with the regulations that the NRC has established to implement the Atomic Energy Act (AEA).⁴ Under the AEA, the NRC is charged with establishing and enforcing regulations necessary to protect the public health and safety, as well as the common defense and security. Disclosure of the withheld information could reasonably be expected to endanger the life or physical safety of any individual because information that is expected to be helpful to potential adversaries interested in executing an attack or other malevolent act can be inferred from the withheld information, and disclosure of the withheld information could thus reasonably be expected to endanger the life or physical safety of the residents living nearby Oconee Nuclear Station.

¹ *E.g.*, *Tax Analysts v. IRS*, 294 F.3d 71, 77 (D.C. Cir. 2002); *Mapother v. DOJ*, 3 F.3d 1533, 1540 (D.C. Cir. 1993).

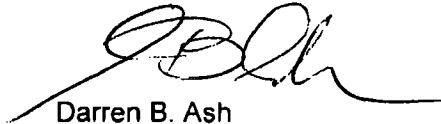
² *E.g.*, *Amuso v. DOJ*, 600 F. Supp. 2d 78, 101 (D.D.C. 2009); *Levy v. U.S. Postal Serv.*, 567 F. Supp. 2d 162, 169 (D.D.C. 2008).

³ *See PEER v. U.S. Section, Int'l Boundary & Water Comm'n*, 839 F. Supp. 2d 304, 328 (D.D.C. 2012); *Living Rivers, Inc. v. U.S. Bureau of Reclamation*, 272 F. Supp. 2d 1313, 1320–1322 (D. Utah 2003).

⁴ The record was prepared by the Deputy Director of the division that was analyzing this issue.

This is the NRC's final decision. As set forth in the FOIA (5 United States Code § 552 (a)(4)(B)), you may seek judicial review of this decision in a district court of the United States in the district in which you reside or have your principle place of business. You may also seek judicial review in the district in which the agency's records are located or in the District of Columbia.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Ash', with a long horizontal flourish extending to the right.

Darren B. Ash
Deputy Executive Director for Corporate
Management and Chief Freedom of Information
Act Officer
Office of the Executive Director for Operations

Enclosure: As stated